



REGULAR MEETING
PUBLIC EMPLOYEES' RETIREMENT BOARD

NOVEMBER 12, 2004

The regular meeting was called to order by President Teichrow at 8:30 a.m. Friday, November 12, 2004. Roll call was taken with all members of the Board being present except Mr. Klawon, who was excused. Board members and staff present were:

Terry Teichrow, President
Carole Carey, Vice President
Robert Griffith, Member
Betty Lou Kasten, Member
Troy McGee, Member
Jim Pierce, Member
Kelly Jenkins, Counsel
Melanie Symons, Counsel
Mike O'Connor, Executive Director
Linda Owen, Secretary

OPEN MEETING

Mark Johnson, Milliman USA; Dale Taliaferro and Jim Christnacht, AMRPE; Jim Kembel, TIAA-CREF; Terrence M. Smith, Big Sky County Water and Sewer District; Jerry Williams and Bill Dove, MT Police Protective Association; Tim Jones, Great-West Retirement Services; Kurt Bushnell, Rick Ryan, Dan Cotrell, Chad Nicholson, Matt Norby, Scott Moore, Jack Trethewey and Ed Regele, members of the Montana State Firemen's Association; and Ian Steel, Disability Claims Examiner; Kim Flatow, Member Services Bureau Chief; Roxanne Minnehan, Fiscal Services Bureau Chief; Kathy Samson, Defined Contributions Bureau Chief; Carolyn Miller, Administrative Officer; and Barb Quinn, Accounting Supervisor, PERA, joined the meeting.

MINUTES OF OPEN MEETING

The Executive Director presented the minutes of the open meeting of September 23, 2004. Mr. McGee moved that the minutes be approved. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

EXECUTIVE DIRECTOR'S REPORT - Mike O'Connor

Board Policy Updates – Ms. Symons advised the Board that the staff policy committee is continuing to work on updating the existing Board policies. She presented two policies for Board approval: the Telephone Abuse Policy and Confidential Information Policy. Ms. Symons explained that the committee is trying to divide out the parts that are relevant to the Board versus the parts that are relevant to staff. The changes are more procedural rather than substantive.

The Telephone Abuse Policy refers to dealing with callers who are abusive during telephone calls. A suggestion was made to clarify the title to make it clear this has nothing to do with employees making abusive calls; it refers to incoming calls only and handling abusive callers. Mr. Pierce moved that the Board adopt the Policy Committee's proposed Telephone Abuse Policy as amended. Mrs. Kasten seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

The Confidential Information Policy is the policy of the Board to protect the privacy rights of Board-administered retirement system and deferred compensation plan members and benefit recipients. The objective of this policy is to establish the criteria for releasing confidential information. Mr. Pierce made a motion to that the Board adopt the Board's Confidential Information Policy as proposed to be amended by the Policy Committee. Mrs. Kasten seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

PERS Contract - The Executive Director presented contracts to extend PERS coverage to employees of North Valley Public Library, Lincoln Conservation District, and the Town of Alberton. Mr. Pierce made a motion to accept the PERS contracts for North Valley Public Library, Lincoln Conservation District, and the Town of Alberton. Mrs. Kasten seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

Legal Service Contract Addendum – Ice Miller – Mary Beth Braitman, with Ice Miller, sent a letter requesting an addendum to their existing contract. The Board contract is with Ice Miller, not individual attorneys, but individual attorney fees are identified in the contract. Katrina M. Clingerman and her rate are not shown. The purpose of the addendum is to add Ms. Clingerman. Mrs. Carey made a motion to approve the addendum to add Katrina M. Clingerman to the existing contract with Ice Miller. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

EIAC Appointments – At the September Board meeting in Miles City, the Board appointed Rick Soto of Butte-Silver Bow County, to the EIAC committee. Mr. Sota decided not to accept the appointment. There was additional interest shown by the Great Falls Transit Authority to have a representative on the committee. Mrs. Kasten made a motion to appoint Jim Helgeson from the Great Falls Transit Authority, as local government representative to the Employee Investment Advisory Council (EIAC), to complete the term vacated by Lorraine Reed. This term will expire on July 31, 2006. Mrs. Carey seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

Board Personnel Committee Report – The objective of the Board is to get staff to their target market salary of their positions. The Board Personnel Committee recommends the Executive Director's salary be increased to \$87,953, based on the Board's pay plan proposal. Mr. McGee moved to adopt the Board Personnel Committee's recommendation to move Mr. O'Connor's salary to the target market salary of \$87,953. Mrs. Kasten does not support this proposal and bases her decision, not on Mr. O'Connor's performance, but because as a former legislator, she never agreed with the policy when it went through the legislature. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with five of the attending members voting aye, and Mrs. Kasten voting nay.

Operational Summary Report - The Executive Director presented an operational summary report for the month of September 2004, answering any questions Board members had.

MPORS DROP – The Montana Police Protective Association (MPPA) is interested in making an adjustment to the Deferred Retirement Option Plan (DROP). Bill Dove, Deputy Chief of Police in Bozeman and Legislative Chairman for the MPPA, presented their ideas to the Board.

Mr. Dove stated that under the DROP, the member continues to contribute to the retirement system, as does the employer. Currently under the DROP, the 2.5% per year increase to a member's retirement ceases as soon as they enter the DROP. They continue to make the monthly contribution to the retirement system, even though they are considered retired. Their accumulated retirement benefit is being paid into the DROP, earning interest with the Board investments. However, the benefit is not really there as they had originally hoped to set this up. This contribution a member continues to make, without any increase in benefits, is costing them.

The MPPA would like to find an equitable solution, suggesting a modification to 19-9-1204, MCA:

Option 1: allow membership service credit to continue at existing 2.5% per year

Option 2: remove requirement for member to contribute to retirement system

Mr. Dove asked that the Board either assist them, or at least not oppose them when they present this change to the law to the Legislature. They would like to work with the Board to determine which option would have the least impact to the unfunded liability of the retirement system, but at the same time, remove this inequity to the employee who is making this contribution.

Mr. O'Connor stated the ultimate goal was to make the DROP cost-neutral. The actuary does a valuation to determine what this benefit would cost. The majority of the contributions that come into the system are used to pay off unfunded liability. If the benefit had been paid for, from the hire date, there would be no unfunded liability.

The actuary will be asked to do a valuation to determine the cost impact.

Board Litigation – Mr. Jenkins advised the Board that in 2001, there was legislation passed that set up coverage for Montana Air National Guard (MANG) firefighters in Great Falls to be covered under the Firefighters' Unified Retirement System (FURS). Previously, they had been covered under PERS.

That coverage was prospective only, for a couple of reasons. It was not certain the federal government would agree to pay for the employer contributions, as a pass-through, for those firefighters and there was reluctance to consider them a regular employer, although they provide all the money for these firefighters. As Air National Guard, these firefighters protect federal facilities. The money passes through the Department of Military Affairs, so they are considered state employees even though it is federal money. Therefore, there is an agreement in place between the Department of Military Affairs and the MPER Board, similar to a local government coverage contract. This would provide an October 1, 2001 effective date forward, ensuring they would cover these firefighters and new hires.

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Another concern was at the state level, for the cost to the state of providing this more expensive coverage. The state would have to provide state contributions, not as an employer, but out of the tax premiums that are paid on fire insurance that cover part of the cost of FURS. Since the excess of those premium taxes usually goes into the General Fund, it would be a hit on the General Fund.

Legislation limited the MANG firefighters to the new hires ad hoc 2001. Firefighters who were MANG firefighters, as of the effective date of that legislation, some of who have retired under PERS and some of who are still active under PERS, brought a law suit saying it was a violation of equal protection. They felt they should be afforded the same coverage as the new hire firefighters and allowed to be a part of FURS also. Presumably, if they are covered under FURS, from October 1, 2001 forward, and the contributions come in, it is somewhat actuarially neutral.

As long as MPERA receives the proper contributions, it is not a concern whether it is limited to new hires or not. There are always cutoff dates to the initiation of new coverage or new programs, and has never been considered to be a violation of equal protection. The Board can help in the defense of the cutoff date, but should not have to take primary responsibility. The Attorney General's Office has agreed to take primary responsibility in the defense of this lawsuit. They are defending Montana law as it currently exists, with the October 1, 2001 cutoff date.

There is a counterclaim to cover the Board's interests. The actuarial soundness of the public retirement system is dependent upon recovering the appropriate employee contributions for participation in the FURS.

The Board acknowledged that Mr. Jenkins brought the matter to their attention and allowed objections, but there were none.

City of Bozeman Firefighters – Ms. Symons advised the Board that a complaint was filed with Risk Management and Tort Defense regarding including the health insurance premiums as compensation in the FURS. They did not take action on this because it is not a Tort.

The basic premise is that the firefighters in Bozeman have had their compensation that is reported to MPERA, include health insurance premiums. Therefore, the compensation used when retirement benefits were determined included the health insurance premiums. They alleged that Bozeman is the only city where that has happened. Staff is still investigating the allegations. There is an equal protection argument that other firefighters should be treated the same as Bozeman.

The counterclaim was handled by asking, if they won, that contributions be paid by the cities and the fire departments regarding this compensation. The Board's tax counsel has reviewed this. Mr. O'Connor stated it depends on how a health benefit plan is structured, whether or not it can be included as compensation.

Mr. O'Connor stated an audit has been done of the city of Bozeman and the findings have not yet been finalized.

Joseph Baumgardner – Mr. Jenkins provided the Board with a Decision and Order of the Baumgardner case, from Judge Dorothy McCarter. Mr. Jenkins had asked for a specialized form of final judgment on one issue called Rule 54(b). He explained there is a specialized way to arrive at those decisions and what it allows to happen is that one issue of an entire case is appealable to the Supreme Court instead of the entire case. This allows the chance to get clarity from the Supreme Court on that one issue, but there is a final judgment that is entered by the District Court on that one issue.

Mr. Baumgardner's counsel indicated he wanted all of the same things to happen, but did not want to call it a 54(b) judgment. The Board needs to decide what they want to do next. This will be more thoroughly discussed in the closed portion of this meeting.

Lorraine Houppert – Mr. Jenkins explained this is the case where the member did not finish out five years of membership service with the University of Montana, but makes a claim that is either irrelevant or that she did finish out five years of membership service. Because Ms. Houppert did not withdraw her accumulated sick and annual leave from the University System, she feels she should get membership service for that time.

This is in front of Judge Honzel and he has set the briefing schedule. This is more a case of what the precedent is and whether we enforce the standards of the system.

Actuarial Review Report – In conjunction with the Legislative Auditor and the Teachers' Retirement System (TRS), the firm of Mellon Consultants was selected to perform an actuarial review of both TRS and the Public Employees' Retirement System (PERS). David Slishinsky, with Mellon, appeared before the Board to present his findings.

Mr. Slishinsky began his presentation by explaining that the purpose of an actuarial review is to provide another actuary's opinion on the actuarial soundness of a retirement system. Only the largest system (PERS) that the Board administers was reviewed at this time. The review confirms that the actuary's calculations are correct, that the funded status is accurately disclosed, and the calculation of the contributions requirements is sufficient to provide for an actuarially sound retirement system. It can also provide ideas on how to do things differently or better, and it exercises the Board's fiduciary obligation to ensure that money is being accumulated to pay for the promised benefits. It is recommended that a review of this nature be done once every ten years.

This was a full-scale review of Milliman, the Board's consulting actuary, with data being collected from both MPERA and Milliman. Mellon performed a complete, independent actuarial valuation to calculate the projected future benefits and benefit obligations under the plan, and to assess the completeness and validity of the information provided. The scope of the actuarial review was to determine whether the valuation procedures are technically sound, determine if generally accepted actuarial stands are being followed, and to review the actuary's reports.

Actuarial assumptions are used to quantify expected future payments, with no one right answer. Whenever actuarial valuation results are compared, normally, the difference will be the way in which actuaries calculate the present value of future normal costs. The fact that Mellon and Milliman are within 1% is very close. For demographic assumptions, established tables that come from experience analysis are used. Generally, mortality tables are changed every ten years.

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Mellon found that the assumptions were generally reasonable and reflected the system experience. The actuarial cost methods are appropriate and properly applied. Based on Mellon's full scope review, their calculations are within 1% of Milliman and, therefore, find the valuation results to accurately represent the financial requirements of the systems.

Mrs. Carey felt that 4.25% per year seemed high for salary increases in Montana. Mr. Slishinsky felt it was important to make sure the underlying economic assumptions that are used in the setting of the investment return assumptions also be applied to the salary scale assumption. These assumptions are generally based on projections of benefits over a long period of time.

Mr. Slishinsky noted that often times, after the actuary has completed his report, someone else does a review of it. This time, Mellon and Milliman were doing their reports concurrently. Milliman wanted Mellon's results and any discussions about any material differences to be part of their report.

President Teichrow thanked Mr. Slishinsky for his report.

Actuarial Valuation 2004 – Mr. Johnson stated that Milliman was very pleased that, if Mellon had done the valuations for the Board, their recommendation on a 30-year funding would have been a difference of 11 basis points, which Mr. Johnson felt was a very close result.

Mr. Johnson reviewed the valuation findings of PERS, touching on the census and how the liabilities are determined. Some assumptions for PERS were revised, but they were very modest changes. The Normal Cost Rate (NCR) was lowered by 19 basis points. The Normal Cost Rate is the average cost of benefits. Mr. Johnson explained that from the time someone enters the system until the time they leave, and all assumptions were met, this would be the cost of the benefit.

The total value of benefits as calculated, is over \$4.3B. That is done by predicting monthly benefits that will be paid well off into the future, and then discount them back at 8% to get a present value (PV). From the PV of benefits, the measure of the actuarial liability would be the total value of benefits, minus what is going to come in on the normal cost. The change from being 100% funded two years ago, to being 87% funded now, the vast majority of that is due to investment returns.

The Plan Choice Rate (PCR) has a lot to do with how this plan is funded because money is going to come from employers of participants in the DCRP to help pay for this. The 2.37% that was in statute was based upon the unfunded liability back from 1998. There was not a surplus at the time it was established. The unfunded liability needs to be measured at the time of the transfers to the DCRP, with June 2003 being the best time for that. Mr. Johnson explained the amortization method in determining the funded status of the DB plan and the PCR, which is very complex, but is actuarially sound. 2.37% is not sufficient to amortize the unfunded liability over 19.75 years. 20.79 years would be needed.

Mr. Johnson explained that if you take the 13.80%, use four basis points (0.04%) for the educational fund, have a normal cost rate of 12.08% and subtract that, it leaves 1.68% of salary available to finance the unfunded liability. The unfunded liability was calculated to be \$466.8M. However, employers of participants in the DC plan are going to finance \$13.5M of that. So, the 1.68% of payroll only needs to finance \$453M. That is not enough; it does not work. If you did it over 40 years or 100 years, it would not work. There is not enough money to pay the interest on the unfunded liability. If you continue with the statutory rate of 13.80%, and if the assumptions used in the valuations turn out to be true, the unfunded liability will continue to grow indefinitely.

Mr. Johnson briefly reviewed the results for the other systems, as well as the calculated contributions based on the actuarial value of assets. In general, the deterioration of the funded status of each system is primarily due to recognizing prior investment losses due to returns less than the long-term assumed rate of 8% per year. His conclusion was that all systems are actuarially sound with current revenue projections except for PERS, GWPORS, and SRS. They are not actuarially sound based on the current statutory contribution, the funding policy of 30-years, and the assumptions. PERS has a shortfall of 1.19% of payroll; GWPORS has a shortfall of 0.23% of payroll; and SRS has a shortfall of 2.15% of payroll.

Mr. Johnson reviewed the contribution shortfall as of 2004, with two alternatives. Alternative 1: If an increase is implemented one year later, it needs to be higher. Alternative 2: This is a two-step phase-in of the increases. President Teichrow asked if it was fiduciarily responsible for the Board to request option 2 versus the responsibility to fund the system **now**. That was a legal question to which Mr. Johnson could not give an answer. Mr. Johnson suggested having the two rates put into statute now. Mrs. Kasten felt it was better to ask the legislature for the amount needed, and how it will be provided can be determined.

Mr. Johnson pointed out that his report does not include the two alternatives, so the Board will not be adopting a report on how to fix the problem, but will be adopting their findings that there is a problem in the three systems (PERS, GWPORS, and SRS). Mr. McGee made a motion to adopt the Actuary Report provided by Milliman. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

Board Legislation – As a follow-up, the valuations are a good lead-in to the Board's legislation on actuarially funding the retirement plans. PERS experienced investment losses in 2001 and 2002. In 2003, things began to improve, and in 2004 returns are up over 10%. That "dip" will be addressed in the actuarial funding of the systems.

To pay retirement benefits, 75% comes from investment income, 12% comes from the employer contributions, and 13% comes from member contributions. The funding issue today is because of investment losses, and Montana's constitution says the systems are to be actuarially funded.

The Board was willing to consider two cost savings measures to help with this funding issue. In looking at the initial temporary regulations for retirement plans that came from the IRS, it said the cost of living increases (i.e. GABA) had to be tied to the CPI. If it were not, it would not be a qualified plan. The IRS final regulations say they will allow a fixed percentage and still maintain a qualified plan status. The 3% GABA now meets the IRS qualification issues.

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The other component that was considered was to change the highest average compensation (HAC) for new hires, going from a 36-month average to a 60-month average that would be built into the formula. The bill draft has the 5-year average for PERS, SRS and GWPORS.

Mr. O'Connor noted another consideration is the additional contributions that are required. The Governor's budget has built in these contribution increases and hopefully with the new administration, they will continue to be in the Governor's budget. The impact on local government needs to be considered, as well as on the state, with 45% of the members in PERS being state employees and 55% being local government employees. The phase-in method of alternative 2 was included in the bill draft with an increase July 1, 2005 and an increase July 1, 2007. The increase in the GWPORS is so small, the total increase would be implemented on July 1, 2005. Only the PERS and SRS increases would be phased in.

Mr. O'Connor stated it is important to remember that this is a temporary increase to make sure the systems are actuarially funded. Once the unfunded liability is reduced, those additional contributions would go away when the actuary does the valuation and the system has the ability to pay off the unfunded liability over 25 years or less.

President Teichrow suggested proposing the bill draft as it is, splitting the increase into two phases, but when testimony is presented to the legislature, to clarify that the Board would prefer to ask for the total of the increases.

The recommendation of the actuary is to increase the Plan Choice Rate (PCR). Mr. O'Connor has some concerns in changing the PCR. When the plan was submitted to the IRS for qualification, there were some long discussions on how often it would change. If it continues to change, it would not be a defined contribution plan and would not meet IRS qualification requirements.

One option would be to increase the corridor, for paying off the liability, from 10 years to 12 years, plus or minus. Does the Board want to do something to earmark contributions to pay off the loan, which indirectly benefits DCRP members because it lowers the fees that are being charged?

Mrs. Kasten made a motion to accept draft LC96. The motion died for lack of a second. Further discussion will continue after the closed portion of the meeting.

The following portion of the meeting relates to matters of individual privacy. President Teichrow determined that the demands of individual privacy clearly exceed the merits of public disclosure. As such, this portion of the meeting will be closed.

CLOSED MEETING

CONTESTED CASES

James Lewis - Informal Reconsideration – Mr. Lewis has requested reconsideration of the Board's determination of purchase price for a service purchase pursuant to 19-3-505, MCA.

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Following a lengthy discussion, Mrs. Kasten made a motion to uphold the Board determination to deny the request in the case of James Lewis. Mr. Pierce seconded the motion, which upon being submitted to vote, failed with Mrs. Kasten and Mr. Griffith voting aye, and Mrs. Carey, Mr. Pierce, and Mr. McGee voting nay.

Mr. Pierce made a motion that the Board accept the amount of \$11,202.97 in complete settlement of James Lewis' disputed claim for purchase of service, subject to settlement agreement agreed to by counsel. Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with Mrs. Carey, Mr. Pierce, and Mr. McGee voting aye, Mrs. Kasten and Mr. Griffith voting nay, and President Teichrow abstaining.

Kasey De La Hunt - Informal Consideration – At their August 2004 meeting, the Board reviewed Mr. De La Hunt's request to be covered under the Guaranteed Annual Benefit Adjustment (GABA), and directed him to supply further documentation to support his claim. Mr. De La Hunt provided a signed election form and letters of support from various individuals of the Helena Fire Department.

Mr. Pierce made a motion to accept the election form and approve GABA coverage for Kasey De La Hunt. Mr. McGee seconded the motion for discussion purposes, which upon being submitted to vote, failed with President Teichrow voting aye, and Mrs. Carey and Mrs. Kasten voting nay.

Mr. McGee moved to uphold the previous Board decision regarding the non-receipt of the GABA election, and that GABA coverage for Kasey De La Hunt is denied. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with Mrs. Carey, Mrs. Kasten and Mr. Griffith voting aye, President Teichrow and Mr. Pierce voting nay, and Mr. McGee abstaining. Result ruled by Board Chair.

MINUTES OF CLOSED MEETING

The Executive Director presented the minutes of the closed meeting of September 23, 2004. Mr. Griffith moved that the minutes of the previous closed meeting be approved. Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

RETIREMENT REPORT - Ian Steel, Disability Claims Examiner

Disability Claims - The Disability Claims Examiner presented the disability claims for Board consideration. Mrs. Carey made a motion for approval of the disability claims as recommended for Kenneth Croff, Timothy Murry, Carl Newton, Margaret Piper, and Patrick Hansen, without annual review; and denying the claim for Rorrie Toren. Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

Disability Reviews - The Disability Claims Examiner presented the disability reviews to the Board. After discussion of all the reviews, Mr. Pierce made a motion to approve the disability reviews as recommended: to continue disability retirement and discontinue annual review for Lawrence Ray, Pamela Anderson, and Sandra Bloom; requesting an IME at Board expense for Terry Theide; and canceling the disability retirement for Richard Graham, Rodney Brown, and Christine Fox. Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

Finalized Service/Disability Retirement Benefits, Monthly Survivorship/Death Benefits, VFCA Lump Sum Death Benefit Payments, and Funeral Benefits - Applications for service retirements/finalized disability benefits, applications for monthly survivorship-death benefits, VFCA lump sum death benefit payments, and applications for funeral benefits were presented to the Board. Mrs. Carey made a motion to approve the retirement benefits as presented. Mr. Pierce seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

Christina Foley - Informal Consideration – Ms. Foley's disability claim was denied at the September meeting in Miles City. After review, Mrs. Carey made a motion to approve a disability retirement with annual reviews. Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

Barbara Fink - Informal Consideration –Ms. Fink previously applied for a disability retirement and the Board denied her request December 4, 2003. Ms. Fink appealed this denial and appeared before the Board in January 2004, when her request for a disability retirement was again denied. She returned to her job and, subsequently, retired and is now drawing a regular service retirement benefit. On September 17, 2004, Ms. Fink submitted a letter asking for a disability retirement. Her request was denied, as it was the staff determination that she is not eligible to apply for a disability retirement benefit. There are no statutory provisions to allow her to do this. She is now appealing the staff decision.

Mrs. Carey made a motion that the Board upholds the staff determination that Ms. Fink is ineligible to apply for disability retirement. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

Loring Harris - Informal Consideration –Mr. Harris retired effective June 1, 2004 and selected an option #3 retirement benefit, nominating his daughter, Heather, as his contingent annuitant. He contacted the MPERA in August 2004, stating he desired to change his contingent annuitant from his daughter to his brother. Staff's initial decision was to deny his request. The law does not allow the change of contingent annuitant that Mr. Harris is requesting. He is appealing this staff decision.

Mrs. Carey made a motion that the Board upholds the staff decision. Mr. Harris is ineligible to change his contingent annuitant from Heather Harris to Bernard Harris. Mrs. Kasten seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

The closed meeting was recessed and the open meeting was reconvened.

Board Legislation (Continued) – The Board had a lengthy discussion on what needs to be incorporated into LC96 regarding the Plan Choice Rate (PCR). Discussion included:

- Increasing the corridor from 10 years to 12 years so the PCR could be paid off within the corridor of the law, but that would require changing the law.
- What to do with the additional contributions that will come in.
- Paying off the \$13 M unfunded liability.
- The IRS qualification issues of continuing to change the plan choice rate. If a defined contribution is no longer defined, you do not have a defined contribution plan.

Mr. O'Connor stated the liability could be paid off in the 10-12 year corridor. Mrs. Kasten felt that by using the 10-12 year corridor, we fall within the acceptable actuarial valuation and the plan choice rate does not continue to escalate. Mr. O'Connor felt the Board needs to think about all those different pieces at the same time. They can amend the bill, regarding the plan choice decision.

Mr. Jenkins explained that the system design purpose is that you do not want to be pushing off the funding of the system onto the next generation, and that is exactly what the legislature did not want to do. You want the contributions in the DCRP to increase and the way you do that is by pushing the liability out to, potentially, 30 years on that particular portion of the DCRP liability. If the numbers increase, that 30 years is going to stay the same.

Mr. O'Connor agreed with Mr. McGee that the two pieces the Board needs to decide are:

1. If the highest average compensation (HAC) should go from three years to five years
2. If the required increase in employer contributions should be phased in over two years

For discussion purposes, Mrs. Kasten moved to accept the draft of LC96, as amended:

1. change the plan choice rate to a longer period (i.e. change from 10 years to 12 years)
2. change the term "biennial" to "actuarial valuation"
3. add increase employer rate to pay off administrative expenses in the DCRP

Mr. Griffith seconded the motion, which upon being submitted to vote, failed with Mrs. Kasten and Mr. Griffith voting aye, and the other four attending members voting nay.

Mrs. Carey made a motion to approve LC96 with the following amendments:

1. drop the 60-month increase to determine the highest monthly compensation
2. add the actuarial study rates
3. change the term "biennial" to "actuarial valuation"

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Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with five of the attending members voting aye, and Mrs. Kasten voting nay.

President Teichrow requested that staff do an analysis and furnish some recommendations/options on how to deal with the PCR, to discuss at the December meeting.

Powder River County/High School – Both Powder River County and Powder River High School have requested that the Board reconsider its July 22, 2004 decision to uphold the staff's determination that both employers are required by law to pay delinquent employer and employee contributions and interest penalty to PERS on behalf of Gina Tabolt.

Ms. Tabolt was working part-time for the county, and when she started working part-time for the high school, she went over the 960-hour limit. Both employers were required by law to make contributions on behalf of Ms. Tabolt, once the 960-hour threshold was met. She was not reported by either employer, so this was not caught until recently, when she was inquiring about retirement estimates. She is now, and has been, full-time since 2003.

Powder River has submitted new evidence in the form of two affidavits from their payroll clerks. Each of them, from each employer, said they did not know Ms. Tabolt worked for the other employer, so they should not have to pay this penalty. They feel it is up to the member or the MPERA staff to notify the employers that Ms. Tabolt was simultaneously employed at both locations. Ms. Symons pointed out that, in actuality, there is no way MPERA staff could know if it was not reported, and you would not want to put that responsibility on the employee because they may not want to be paying their contributions. It is the employer's responsibility for determining which employees are required to be members of the retirement system. Employers are obligated by their contracts with PERS and by law to pay contributions on all members. The responsibility is the employer's if a member goes over 960 hours.

Mrs. Kasten made a motion that the Board determines that Powder River County and Powder River High School are required by law to pay delinquent employer and employee contributions and interest penalty to PERS on behalf of Gina Tabolt. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with five of the attending members voting aye, and Mr. McGee voting nay.

The meeting was again closed to continue with the retirement report.

Richard Patera - Informal Consideration – This is the case regarding which membership card controls the identity of Richard Patera's designated beneficiaries.

Board consideration was delayed at their September meeting pending efforts between Edward and Diane to settle the matter. No settlement has occurred and no additional information has been provided. Edward Patera would like a continuance until December.

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Mrs. Kasten felt the Board should adhere to their previous decision with no continuance. Mr. McGee felt the Board has been willing to listen to both sides and would have to grant a continuance in order to be fair. Mr. Pierce made a motion that the Board continues consideration of Ed Patera's request until no later than December 2004. Mrs. Carey seconded the motion, which upon being submitted to vote, was duly carried with five of the attending members voting aye, and Mrs. Kasten voting nay.

Joseph Baumgardner – Decision and Order - Mr. Jenkins stated he has asked for a 54B motion for judgment for one issue--legislative delegation of authority. A notice of appeal would be filed almost immediately to get it before the Supreme Court. It was Board consensus for Mr. Jenkins to proceed as outlined.

City of Bozeman - Ms. Symons advised the Board of the Bozeman retired firefighters who requested to have their health insurance premiums included in their retirement compensation. Ice Miller, the Board's tax consultant, stated in a letter that, unless it can be shown a determination from the IRS that Bozeman's 125 Plan is valid, it cannot be accepted.

ADJOURNMENT

There being no further business to come before the Board at this date, Mrs. Carey made a motion to adjourn the meeting. Mr. Pierce seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye. The next meeting is tentatively scheduled for December 9, 2004, at 8:30 a.m. in Helena.